

UNITED STATES DISTRICT COURT
DISTRICT OF NEW HAMPSHIRE

ANDRE BISASOR,
Plaintiff,

vs.

CRAIG S. DONAIS, RUSSELL F.
HILLIARD, DONAIS LAW OFFICES
PLLC, UPTON AND HATFIELD LLP,
and MARY K. DONAIS,
Defendants.

Case No. 1:23-cv-374-JL-TSM

**DEFENDANT RUSSELL F. HILLIARD’S OPPOSITION TO PLAINTIFF’S REFILED
MOTION TO ENTER DEFAULT AGAINST DEFENDANT RUSSELL HILLIARD (Doc.
no. 85)**

NOW COMES Defendant Russell F. Hilliard (“Hilliard”) and submits the following Opposition to Plaintiff’s Refiled Motion to Enter Default Against Defendant Russell Hilliard (the “Motion”). Plaintiff’s Motion was already denied by the Superior Court in Massachusetts before removal and is moot because a motion to dismiss was filed before the responsive pleading deadline and any action was taken on the default request.

I. BACKGROUND

This lawsuit was originally filed on June 20, 2022. *See* State Court Docket attached as Exhibit 1. Since filing, and prior to removal, Plaintiff moved no less than five times to extend the time period in which he could serve the Complaint. *See* Exhibit 1 at File Ref. Nbrs. 6, 9, 10, 11, and 12. Plaintiff filed a purported return of service for the Amended Complaint for Mr. Hilliard on May 15, 2023. *See* Exhibit 1 at File Ref. Nbr. 18. However, the “return of service” is a copy of an envelope with a mailing date of May 8, 2023, not a service date of May 8, 2023. *Id.* Mr. Bisasor appears to have attempted to serve Mr. Hilliard – a New Hampshire resident – under the procedure

set forth in Mass. R. Civ. P. 4(e)(3) (“When any statute or law of the Commonwealth authorizes service of process outside the Commonwealth, the service shall be made by delivering a copy of the summons and of the complaint: (3) by any form of mail addressed to the person to be served and **requiring a signed receipt.**”) (emphasis added).

II. THE STATE COURT DENIED PLAINTIFF’S PRIOR DEFAULT REQUEST

Mr. Bisasor previously filed a Motion for Default against Mr. Hilliard, which was denied by the state court prior to removal. *See* Exhibit 1 at entry dated June 2, 2023. The current Motion reiterates much of what is spelled out in the original motion, but the newly added material does not cite any support for a reconsideration of the state court’s ruling.

III. THE REQUEST FOR DEFAULT IS PREMATURE AND MOOT

This matter was removed to the United States District Court for the District of Massachusetts by Defendant Upton & Hatfield, LLP before it was transferred to this Court. Mr. Hilliard had not filed a responsive pleading in state court prior to removal to this Court. *See* Exhibit 1. Fed R. Civ. P. 81(c)(2) provides:

Further Pleading. After removal, repleading is unnecessary unless the court orders it. A defendant who did not answer before removal must answer or present other defenses or objections under these rules within the longest of these periods:

- (A) 21 days after receiving—through service or otherwise—a copy of the initial pleading stating the claim for relief;
- (B) 21 days after being served with the summons for an initial pleading on file at the time of service; or
- (C) 7 days after the notice of removal is filed.

As detailed in an earlier filed affidavit, Mr. Hilliard received a copy of the Amended Complaint via regular mail at his home on May 11, 2023. *See* Doc. 16-1 at ¶ 1. This matter was removed to this Court on June 9, 2023. As such, Mr. Hilliard’s responsive pleading deadline was June 16, 2023 (as the 7-day period under subsection (c) is longer than the 21-day period under

subsection (a)). Plaintiff's Motion, originally filed on June 15, 2023 was premature, and is now moot as Mr. Hilliard filed a Motion to Dismiss on June 16, 2023, within the time period allowed by Fed. R. Civ. P. 81(c)(2)(C). Mr. Hilliard subsequently filed a Motion to Dismiss in this Court on October 26, 2023, after it was transferred to this Court.

WHEREFORE, Defendant Russell F. Hilliard respectfully requests this Court deny Plaintiff's Refiled Motion to Enter Default Against Defendant Russell Hilliard, along with any other relief the Court deems proper.

Respectfully submitted,

The Defendants,
RUSSELL F. HILLIARD and
UPTON & HATFIELD, LLP,

By their attorneys,

Dated: November 9, 2023

/s/ Daniel R. Sonneborn

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CERTIFICATE OF SERVICE

I hereby certify that I caused a true copy of this document to be served via electronic filing on all counsel of record or pro se parties on November 9, 2023.

/s/ Daniel R. Sonneborn

Daniel R. Sonneborn